IN RE ESTATE OF ABDUL GHAFFOOR SAIBOO TAMBY, EX P; THE OFFICIAL ADMINISTRATOR MALAYSIA

HIGH COURT MALAYA, PENANG
MOHAMED DZAIDDIN J
[ORIGINATING SUMMONS NO. 21-538-1979]
12 JUNE 1989

CIVIL PROCEDURE: *Variation of order under the Court's inherent power - Any difference between transfer and vested order - Whether any change in the substance of the order.*

By an order dated 3 March 1980, the applicant was given liberty to transfer the deceased's property to 2 named beneficiaries. However, as the beneficiaries were unable to settle the arrears of the quit rent, the applicant could not effect the transfer. Hence the applicant filed an application to amend the order to read as "1/15 undivided share be **vested** in the names of 2 named beneficiaries."

The applicant relied on the ground that the Court under its inherent power may vary its own orders so as to carry out its own meaning and to make its meaning plain.

Held:

[1] The amendment sought by the applicant is for a vesting order of the undivided share of the property to the 2 beneficiaries. There is a difference in law between a vesting order and a transfer. Therefore to allow an amendment will amount to changing the whole character and substance of the said order.

[2] There is no error or omission in expressing the manifest intention to the Court. Here, a vesting order should not be made where it is merely intended to facilitate or be a substitute for ordinary conveyancing practice.

[Application refused.]

Cases referred to:
Thynne v. Thynne [1955] P 272
Hatten v. Harris [1892] AC 560
Dotter v. Evans [1969] VR 41

Legislation referred to:
Rules of the High Court 1980, O. 20 r. 11

Other source referred to:
White Book 1985

For the applicant - Azhar bin Haji Maah, Senior Federal Counsel

JUDGMENT

Mohamed Dzaiddin J:

This is an application by the Official Administrator, Malaysia seeking the leave of this Court to amend the Court order dated 3 March 1980 which granted him liberty to transfer a share of the deceased estate's property to two beneficiaries. The main prayer of the present application reads:

(1) The prayer (a) in the order of Court dated 3 March 1980 in the above originating summons be amended and to read as follows:

Lot 1489, Bandar Butterworth, Sek.4, Seberang Perai Utara (old Lot No. 191(2)Mk.15) - 1/15 undivided share be vested in the names of the following beneficiaries:

(i) Chomby bt. Md. Hassan - 97/104 shares.

(ii) Jainab bt. Abdul Ghaffoor - 7/104 shares.

The ground for this application is succinctly stated in the affidavit of Osman bin Yaacob, Senior Assistant Official Administrator, affirmed on 29 June 1988. By the order of 3 March 1980 the applicant was given liberty to transfer the deceased's property to the two named beneficiaries above. However, as the beneficiaries were unable to settle the arrears of quit rent amounting to RM16,212.88, the applicant could not effect the transfer. Hence, the applicant filed this application.

According to the written submission of Encik Azhar Haji Maah, the Senior Federal Counsel, this Court has the inherent power to rescind or vary the said order of 3 March 1980 for the following reasons:

1) The application to rescind or vary the present order is made by the same party, namely the Official Administrator who applied for it earlier. There is no opposing second or third party involved;

2) There is no change in the substance of the order - the end result will be the same with what the original order has intended;

3) There is a precedent in this case where Mr. Justice Gunn Chit Tuan (as he then was) revoked the first order dated 18 July 1977 (order of sale) and substituted it with the present order.

Obviously, the applicant cannot rely on O. 20 r. 11 Rules of the High Court 1980 for this sort of amendment. However, the Court under its inherent power may vary its own orders so as to carry out its own meaning and to make its meaning plain (*Thynne v. Thynne* [1955] P. 272 CA). According to the *1985 White Book* at p. 351 the error or omission must be an error in expressing the manifest intention of the Court:

> Where an error of that kind has been committed, it is always within the competency of the Court, if nothing has intervened which would render it inexpedient or unequitable to do so, to correct the record in order to bring it into harmony with the order which the Judge obviously meant to pronounce. The correction ought to be made on motion, and is not matter either for appeal or rehearing (per Lord Watson in *Hatten v. Harris* [1892] AC 560).

The amendment which is now sought by the applicant is for a vesting order of the undivided share of the said property to the two beneficiaries substituting the former order of a transfer to the same parties. The reason for the application is the inability of the beneficiaries to comply with the legal requirement under the National Land Code 1965 i.e. to pay the arrears of quit rent before the 1/15 undivided share could be transferred to them. Regardless whether the parties to the order are the same, it is erroneous to say that there is no change in the substance of the order. On the contrary, there is a difference in law between a vesting order and a transfer. In my opinion, to allow an amendment to the order in the present application will amount to changing the whole character and substance of the said order. Clearly, there is no error or omission in expressing the manifest intention of the Court. In fact, " a vesting order should not be made where it is merely intended to facilitate or be a substitute for ordinary conveyancing practice." *Dotter v. Evans* [1969] VR 41 per Gillard J at pp. 44-45.

For the reasons stated above, this is not a case where I should exercise my inherent power to vary the said order. Accordingly, the application is refused.

Also found at [1989] 2 CLJ 830